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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,016	01/29/2004	Lawrence R. Foore	TAN-2-1400.06.US	4719
24374	7590	02/25/2009	EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103				QURESHI, AFSAR M
ART UNIT		PAPER NUMBER		
2416				
MAIL DATE		DELIVERY MODE		
02/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/767,016	FOORE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	AFSAR M. QURESHI	2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 37 and 39-46 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 37, 39-46 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. This Office Action is responsive to Amendment/Remarks received on 2/3/2009.

Applicant cancelled claim 38 and amended claim 1.

Request for continued examination (RCE) is made of record.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 37, 39-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant amended claim 37 by adding "receiving control data indicative of a data rate associated with the data traffic channel over a control channel". However, no clear support can be found, in the Specification, for a *control channel* carrying control data indicative of data rate. Applicant is requested to provide clear support for the above subject matter.

***Response to Arguments***

3. Applicant's arguments filed 2/3/2009 have been fully considered but they are not persuasive.

Applicant argued that cited reference, Quick, fails to teach or suggest "receiving data from at least one data buffer I the base station over a data channel and to receive control data indicative of data rate associated with the data traffic over a control channel and wherein the CDMA user device is dynamically assigned additional data traffic channels for receiving data based on an urgency factor, wherein the urgency factor is based of data present in the data buffer", page 5).

Examiner notes that some of the above arguments include newly added subject matter and will be addressed in the following rejection.

Additionally, as responded to in the previous "Response to Arguments" dated 12/3/2008, Examiner, respectfully, disagrees with the Applicant's analysis of the rejection. The system disclosed by Quick is communicating digital data between digital transceivers and digital base stations via random access channel and/or dedicated channel based on **bandwidth demand** (urgency factor). If the demand exceeds a first threshold, a dedicated channel is assigned to the digital transceiver to receive digital data packets on dedicated channel. For further clarification Examiner included the same in the body of the rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4       Claims 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quick Jr. (US 5,673,259) in view of Richardson et al. ('Richardson' hereinafter) US 5,369,637).

Claims 37, 39-44, Quick Jr.('Quick') discloses a CDMA cellular telephone system, used in CDMA applications, having forward link and reverse link, mobile stations 102 transmitting data to a (fig. 1) base stations 108 over plurality of wireless access channels 208 (also see fig. 3). Mobile station is configured to **receive data traffic** from base stations on "**Dedicated traffic channel 214**" assigned by the base station to carry the VOICE information (see col. 3, lines 63 through col. 4, lines 22-38). Both the dedicated channel and random channel can be considered as data traffic channel used to carry the additional data traffic (see col. 1, lines 61 through col. 2, lines 1-8, and, col. 10, lines 54 through col. 11, lines 1-4).

Quick further discloses a searcher reservation scheme which uses a priority assignment algorithm based on type (user specific long code used to encode data and voice transmission) and amount of traffic in the queues (buffer), to be transmitted to the

CDMA user device, wherein device **receiving data traffic on at least one “Dedicated channel”** (see Abstract, col. 9, lines 50 through col. 10, lines 1-4).

The system disclosed by Quick is a switching system, comprising a random access channel and dedicated channel for a digital transceiver to receive a data from digital base station. It switches between random access channel and dedicated channel based on bandwidth demand (Urgency Factor), as disclosed under the heading 'SUMMARY'.

Quick does not specifically disclose a control channel carrying control data indicative of a data rate associated with the data traffic channel.

Richardson discloses a control channel carrying control data indicative of assigned data rate (see col. 3, lines 1-17, figure 2)

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of invention, that a transceiver is assigned 'dedicated channel' to receive data based on amount of traffic; bandwidth demand; queue occupancy, etc. (known and old to an artisan as 'urgency factors'). Further, one of ordinary skill in the art, at the time of invention, would have made use of teachings of Richardson by utilizing control channel frame format in order to provide flexibility in symbol rates and to prevent throughput reduction based on data rate feedback.

Claims 45-46, Quick discloses bandwidth demand associated with thresholds as traffic type attribute. Quick does not specifically disclose if the data buffer is hardware controlled by fast cache memory (claim 41). However, Quick discloses a

processor 302 (fig. 3), and while in switching signals, is capable of storing data packets correspond to threshold levels and based on bandwidth demand, these data packets are transmitted and controlled by searcher scheme (software) (see col. 11, lines 5-53). It is known and old that a computer, (digital processor 302 in this case), comprises fast cache memory that is capable of storing instructions, when executed, used to control transmission from buffers.

Therefore it would have been obvious to one of ordinary skill in the art, at the time of invention, to be able to modify processor 302, utilizing fast cache memory to control data buffer in order to facilitate an efficient data packet transmission to a cell site within a CDMA system.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Adachi et al. (US 5,586,113).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AFSAR M. QURESHI whose telephone number is (571)272-3178. The examiner can normally be reached on 9 hrs. flexible.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272 7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

2/19/2009

/Afsar M Qureshi/  
Primary Examiner  
Art Unit 2416